



September 12, 2016

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, *In the Matter of Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On September 8, 2016, members of the Consumer Video Choice Coalition (“the Coalition”), represented by Ed Black and the undersigned of the Computer & Communications Industry Association (CCIA); Senator Byron Dorgan of Arent Fox; Congressman Chip Pickering of INCOMPAS; Gene Kimmelman of Public Knowledge; and Kim Bayliss of Grayling met with Commissioner Jessica Rosenworcel and Marc Paul, Legal Advisor to Commissioner Rosenworcel, regarding the above-referenced proceedings. The Coalition representatives stressed the importance of the Commission acting on its mandate from Section 629¹ as MVPDs have increased their control of the set-top box marketplace over the past two decades,² costing consumers about \$20 billion per year in leasing fees. The Commission should resist action that would weaken the rights that consumers enjoy today or restrict the ability of third parties to develop new features that help consumers gain access to lawful content.³ The Coalition

¹ See 47 U.S.C. § 549a (2012) (“The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.”).

² See Comments of CCIA, MB Dkt. No. 16-42, CS Dkt. No. 97-80, at Sec. II (filed Apr. 22, 2016) (noting that in 2008, about 96% of subscribers leased a set-top box from their provider, but today that figure has increased to 99%).

³ See generally *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 447 (1984) (“Even unauthorized uses of a copyrighted work are not necessarily infringing. An unlicensed use of the copyright is not an infringement unless it conflicts with one of the specific exclusive rights conferred by the copyright statute.”); *Fox Broad. Co., Inc. v. Dish Network LLC*, 723 F.3d 1067, 1073 (9th Cir. 2013) (denying Fox’s claims; consumers’ recording was a “fair use” under *Sony*); David Bauder, *DVR Usage Changes Nielsen Ratings Picture*, THE WASH.

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representatives discussed how assertions made in recent ex parte letters from content companies raise serious questions regarding antitrust and how oversight by the Commission is essential to preventing anticompetitive practices. The Coalition representatives emphasized certain principles that are essential to facilitating competition in this marketplace: (1) open innovation, in particular an open and independent user interface; (2) consumers must continue to receive, at minimum, the functionality that they enjoy and rely upon today; (3) device interoperability across MVPDs, to enable consumers to purchase devices that work reliably and consistently across all programming distributors; and (4) protection and enforcement of rights so that MVPDs cannot unilaterally withdraw features or content from competitive devices.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

Consumer Video Choice Coalition

/s/ John A. Howes, Jr.
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cc: Hon. Jessica Rosenworcel
Marc Paul

TIMES (Oct. 6, 2015), <http://www.washingtontimes.com/news/2015/oct/6/dvr-usage-changes-nielsen-ratings-picture/> (noting that time-shift recording (first on videotape, then DVRs) has become an accepted consumer fair use practice that benefits content owners by expanding their audiences). Since 1984, it has been incontrovertible that consumers have the right to enjoy the personal private use of video content that they are lawfully entitled to receive.